

Town of Thompson's Station
Board of Mayor and Aldermen
Minutes of the Meeting
November 1, 2018

Call to Order.

The meeting of the Board of Mayor and Aldermen of the Town of Thompson's Station was called to order at 6:00 p.m. on Thursday, November 1, 2018 with the required quorum. Members and staff in attendance were: Mayor Corey Napier; Alderman Brandon Bell, Alderman Ben Dilks; Alderman Graham Shepard; Alderman Brian Stover; Town Planner Wendy Deats; Town Clerk Jennifer Jones; Town Attorney Todd Moore and Town Attorney Allison Bussell.

New Business:

1. Resolution 2018-021 A Resolution of the Board of Mayor and Aldermen of the Town of Thompson's Station, TN to approve a Proposed Settlement Agreement from Whistle Stop Farms, LLC to dismiss the pending litigation (U.S. District Court Middle Tennessee, Cases 3:16-Cv-02934 and 3:16-Cv-03309).

After discussion, Alderman Bell made a motion to approve the proposed settlement agreement from Whistle Stop Farms LLC to dismiss the pending litigation with the following contingencies:

1. Adding in a good faith clause
2. Adding in a force majeure clause
3. Adding a mediation clause to understand good faith
4. If additional capacity is available at the Heritage facility, Whistle Stop can utilize that as long as the infrastructure is sufficient.
5. Whistle Stop has first right to the taps at Heritage Commons.

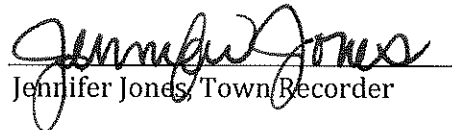
The motion was seconded and approved by all.

(See settlement agreement attached as part of these minutes)

Adjourn

There being no further business, the meeting was adjourned at 7:02 p.m.


Corey Napier, Mayor


Jennifer Jones, Town Recorder

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Whistle Stop Farms, LLC, a Tennessee limited liability company (“Developer”) and the Town of Thompson’s Station (“Town”) (collectively, the “Parties”), effective November 9th, 2018 (the “Effective Date”).

1. RECITALS

1.1 Developer filed two lawsuits against the Town and both of them are currently pending in United States District Court for Middle Tennessee, *Whistle Stop Farms, LLC, v. Town of Thompson’s Station*, 3:16-cv-02934 and *Whistle Stop Farms, LLC v. Board of Mayor and Aldermen for Thompson’s Station, et al*, 3:16-cv-03309 (collectively, the “Litigation”).

1.2 The Parties wish to enter this Agreement to resolve all disputes between them related to the Whistle Stop Farms development (hereinafter “Whistle Stop” or the “Project”), which would result in Developer dismissing the Litigation.

Based on the foregoing, and other consideration set out herein, the Parties agree as follows:

2. SETTLEMENT TERMS

Whistle Stop Farms Development

2.1 Developer may proceed based on the original approvals by the Town’s Planning Commission in October 2013, except as otherwise provided herein, including Phase I for 46 residential lots. Whistle Stop shall be subject to the Town’s zoning ordinance and subdivision regulations in effect on October 22, 2013, except as specifically provided herein. A copy of the relevant applicable provisions is attached hereto as **Exhibit “A”**.

2.2 Developer may build up to 343 units in Whistle Stop, including up to 179 multi-family units and one (1) commercial unit, in the area shown on the Revised Concept Plan, presented in the form of a revised Preliminary Plat, attached hereto as **Exhibit “B”** and is hereby deemed approved by the Town upon approval of this Agreement by the Town’s Board of Mayor and Aldermen (“BOMA”). The single-family units shall be developed as reflected on **Exhibit “B.”** The multi-family units shall be developed in accordance with the development standards in the Town’s Land Development Ordinance (“LDO”) in effect on the date of this Agreement, with the exception that the Developer shall be permitted to satisfy its obligation to separate multi-family units from the single-family units in the Project with heavily forested berms in lieu of masonry walls required by Section 4.10.3 of the applicable multi-family development standards attached hereto as **Exhibit “C”**.

2.3 The Town agrees that wastewater service shall be made available to the Project as follows:

(a) The Town has now acquired the land necessary for disposal capacity at the regional wastewater treatment facility for Whistle Stop. The Town agrees that, upon full execution of this Agreement, all 343 approved lots in Whistle Stop shall be permitted and

able to connect to the Town's regional wastewater treatment facility on the following schedule and subject to the following terms:

(1) Phase I of the Project, which includes 46 residential lots and the 1 commercial lot, shall be permitted to connect immediately to the Town's existing wastewater system, with such lots to initially be treated at the Heritage Commons wastewater treatment facility.

(2) The remaining 297 approved lots in Whistle Stop shall be permitted and able to connect to the Town's regional wastewater treatment facility according to the timeline set forth below AND upon the completion of the sewer lines and facilities necessary to physically connect the Project to the regional wastewater system (collectively, the "Connection Improvements"). The Connection Improvements shall not include any regional wastewater system upgrades related to Whistle Stop's connection or otherwise.

(i) Developer may connect the first 100 additional units (in addition to Phase I) on December 31, 2020, but if these taps become available before this date, Developer may connect at the earlier time;

(ii) an additional 100 units not later than December 31, 2021, but if these taps become available before this date, Developer may connect at the earlier time; and

(iii) the remaining 97 units not later than December 31, 2022, but if these taps become available before this date, Developer may connect at the earlier time.

The Developer shall be responsible for all costs related to the design and construction of the Connection Improvements that are necessary to serve Whistle Stop. The process for construction of the Connection Improvements shall proceed as follows:

Developer shall provide the Town with written notice, sketch plans, and a proposed timeline for construction of the Connection Improvements before construction begins. Within thirty (30) calendar days of the Town's receipt of such notice and other documentation, the Town shall notify Developer as to whether (1) any additional upgrades shall be installed along with the Connection Improvements, including but not limited to any lines being up-sized to accommodate other connections or; and/or (2) the Town elects to complete the Connection Improvements in lieu of Developer by formally bidding out the project.

In the event that the Town requires that lines be up-sized or upgrades be installed beyond what is needed to service Whistle Stop, the Town shall be responsible for all costs associated with such up-sizing or upgrades.

In the event that the Town elects to complete the Connection Improvements and any up-sizing or upgrades through a bid process, the Town shall bid out the project within thirty (30) calendar days of its notice to Developer of such election. The Town further agrees that the project will be awarded to the successful bidder within fifteen (15) days of Developer posting its pro rata portion of the Connection Improvements costs (*i.e.*, the costs related to the design and construction of the Connection Improvements that are necessary to serve Whistle Stop), with construction to begin and be completed as soon thereafter as reasonably practicable.

In the event that the Town elects not to complete the Connection Improvements and any up-sizing or upgrades through a bid process, construction of the project shall not begin until after Developer posts a performance bond in the form of an irrevocable stand-by letter of credit. The bond shall be in an amount as determined the Town's consultant(s) as deemed to be sufficient to secure and assure the Town of the satisfactory construction, installation, and dedication of the Connection Improvements. In the event Developer does not complete the construction of Connection Improvements within thirty (30) calendar days after the estimated timeline for completion, the Town may give the Developer written notice of its intent to draw upon the performance bond and complete the Connection Improvements. Upon the receipt of such notice, the Developer shall either complete Connection Improvements within fifteen (15) days or terminate work to allow the Town to complete construction. Upon completion of the required improvements, the performance bond may be reduced to a maintenance bond of not less than thirty percent (30%) of the performance amount. The requisite maintenance bond shall remain in place until the Connection Improvements are accepted by the Town.

The Town agrees to take all measures consistent with a diligent, good-faith effort ("Diligent, Good-Faith Efforts") to ensure that the respective deadlines outlined in Subsections 2.3(a)(2)(i) through 2.3(a)(2)(iii) are met and that the wastewater connection requirements outlined in the above schedule are provided in accordance with this Agreement. The Town further agrees to exercise Diligent, Good-Faith efforts in resolving any unanticipated complications arising from its efforts to comply with deadlines outlined in Subsections 2.3(a)(2)(i) through 2.3(a)(2)(iii). Developer agrees that it will not hold the Town liable or responsible for breaching this Agreement, or deem the Town to have defaulted under this Agreement, for failing to meet the deadlines outlined above, provided that these Diligent, Good-Faith Efforts are made.

In addition, the Town shall not be liable or responsible to Developer, nor be deemed to have defaulted under or breached this Agreement, for any failure to permit Whistle Stop to connect any portion of the remaining 297 units to the regional system by the respective deadlines outlined in Subsection 2.3(a)(2)(i) through 2.3(a)(2)(iii) above, when and to the extent such failure is caused by or results from the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities

(whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law, other than any government order or law promulgated by or on behalf of the Town; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority, other than actions by or on behalf of the Town; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or similar industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of the Town. The Town shall give notice within twenty (20) days of the Force Majeure Event to Developer, stating the period of time the occurrence is expected to continue, based on information then-available. The Town shall exercise Diligent, Good-Faith Efforts to end the failure or delay and minimize its effects. The Town shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

If Whistle Stop is not able to connect any portion of the remaining 297 units to the regional system by the respective deadlines outlined in Subsection 2.3(a)(2)(i) through 2.3(a)(2)(iii) above as a result of any Force Majeure Event and/or despite the Town's Diligent, Good-Faith Efforts to provide Whistle Stop such connection, but capacity is available at the Heritage Commons facility, Developer shall be first in line (*i.e.*, no other developer, applicant, person or entity will be provided access to Heritage Commons ahead of Developer from the date of BOMA's approval of this Agreement (November 1, 2018) until Developer is able to connect all 297 units to the regional system) to connect as many units as may be connected based on the capacity of the Heritage Commons facility (with "Capacity" to include wastewater treatment capacity AND infrastructure functionality and availability, to be determined by the Town's engineers and verified and confirmed by the Tennessee Department of Environment and Conservation ("TDEC") at the time of connection). Any such connection to the Heritage Commons facility shall continue until such time as capacity is available at the regional facility and the Town in its sole discretion elects to service those taps at the regional facility. In the event the Town exercises its discretion to relocate such taps to the regional facility, the Town shall be responsible for any costs associated with the relocation.

The Parties agree that, should any dispute arise over whether particular circumstances or events constitute a "Force Majeure Event" or "Diligent, Good-Faith Efforts" as outlined above, the Parties shall mediate the dispute in good faith before filing suit. The Parties shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially-reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties.

(b) The Parties agree that the wastewater tap fee structure for the units in Phase I of the Project, which includes 46 residential units and the 1 commercial unit, shall be as follows: The System Development Fee is \$2,500, which has already been paid by Developer to the Town in the amount of \$115,000; the Tap Fee is \$1,100, to be paid upon approval of final plat; and the Effluent Disposal Fee is \$2,500, to be paid with the building permit application. The Parties agree that the wastewater tap fee structure for the remaining units within the Project shall be as follows: The System Development Fee to be paid upon approval of preliminary plat at the Town's standard rate then in effect; the Tap Fee to be paid upon approval of final plat at the Town's standard rate then in effect; and the Effluent Disposal Fee to be paid with the building permit application at the Town's standard rate then in effect. The Town and the Developer also agree that the Developer has paid \$3,430 for the Capacity Allocation Fee for the entire Project (343 units). The Town and the Developer agree all other tap fees will be paid by the responsible parties as they become due.

(c) By execution of this agreement based on BOMA's approval of same, the Town hereby guarantees and vests Developer with rights to wastewater treatment capacity for 343 residential units and one (1) commercial unit within Whistle Stop for so long as the Developer and/or Developer's successors and/or assigns retain vested rights in the Project, pursuant to state law. Developer's rights to wastewater treatment capacity in the Project are not transferable to another development or project, but those rights shall inure to the benefit of Developer's successors and/or assigns.

2.4 The Town and Developer further agree as follows:

(a) All other applicable fees, including impact fees, shall be paid at the time any building permit is issued for any lot within the Project, which shall be paid by the entity applying for such building permit.

(b) Town agrees that the Developer may install the Connection Improvements and water lines necessary to service the Project within the Thompson's Station Road, West right-of-way. Developer shall only be responsible for "patching" the road and shall not have to repave the entire road. The Town further agrees that the Developer may install the Connection Improvements in any other of the Town's easements or rights-of-way. To the extent additional easements are needed for the installation of the Connection improvements or water lines, the Town agrees to obtain those easements, including through condemnation proceedings, at Developer's expense.

(c) The Town shall not require Developer to make any other off-site improvements for the Project other than minimal improvements to School Street. The minimal improvements to School Street contemplated by this provision consist solely of the paving of the edges thereof, as necessary.

(d) Town has provided current Old Town design documents to Developer, which are attached hereto as **Exhibit "D"**, and Developer may connect its entrance to Thompson's Station Road, West based on this revised design.

(e) The Town agrees that the tree replacement requirements for Project shall remain at 24" with a replacement ratio of .5" to 1". The Town further agrees that street trees and trees within the heavily forested berms provided for in Section 2.2 of this Agreement shall be counted towards the Project's tree replacement requirements.

(f) The Parties agree that no more than forty-five percent (45%) of the Project must remain open space as originally provided for in a Planned Neighborhood zoning district, pursuant to Town Ordinance No. 10-001.

(g) The Town agrees that the Developer may install extruded curbs, as set forth in the construction drawings for Phase I considered and approved by the Town Engineer on June 30, 2014, within the entire Project. The Town agrees that the width of the right of way shall be fifty (50) feet.

(h) The Parties agree that Developer is permitted to transfer, sell, assign, etc. the Project, as a whole or in part, at any time after the Effective Date of this Agreement, and that the provisions of this Agreement inure to the benefit of Developer's successors, assigns, purchasers and/or transferees, provided that such successor, assign, purchaser or transferee also complies with Developer's responsibilities as set out in this Agreement.

(i) Grading Permit No. 107, issued on June 30, 2014, remains in full force and effect and is hereby extended by the Town for twelve (12) months from the Effective Date of this Agreement.

Timeline and Dismissal of Litigation

2.5 The Parties to this Agreement understand that approvals and conditions, including the dismissal of the Litigation, are required to effectuate their intent.

2.6 Developer will file a Preliminary Plat for Whistle Stop, a copy of which is attached hereto as **Exhibit "B"**, which the Town shall review and approve or disapprove at its specially-called Planning Commission meeting to be held on November 1, 2018. Upon approval of the Preliminary Plat, the Developer shall have vested rights in the Whistle Stop development in accordance with state law. Developer may also submit for final plat approval of Phase I at the next regularly-scheduled Planning Commission meeting. At Developer's election, Developer may submit a completed final plat application for Phase I or, alternatively, may submit a partial final plat application for Phase I, subject to a later approval of construction drawings by the Planning Commission. Developer is not required to submit its application for approval of the final plat of Phase I at the same time it submits its preliminary plat application for Whistle Stop. **The Parties agree that all plat approvals, preliminary and final, identified herein shall be conditioned upon a dismissal of the Litigation, so that if the Litigation is not dismissed in accordance with the terms of this Agreement, Developer agrees that these approvals are void and the Parties may resume the Litigation.**

2.7 The BOMA's approval of this Settlement Agreement shall constitute approval of Developer's right to access and use the wastewater system described in Section 2.3, and no further approval of the BOMA shall be required.

2.8 A copy of the Town's form Development Agreement is attached hereto as **Exhibit "E"**, and the BOMA's approval of this Settlement Agreement shall constitute approval of the Development Agreement and no further approval of the BOMA shall be required. In the event any provisions of this Agreement conflict or are inconsistent with any provisions of the form Development Agreement, the Parties expressly agree that the provisions of this Agreement shall control and govern and cannot be and are not modified by the form Development Agreement. The BOMA's approval of this Settlement Agreement shall constitute approval of the Development Agreement for Whistle Stop and no further approval of the Town shall be required. In addition, the Parties further agree to certain modifications to the terms of the form Development Agreement, as set forth on **Exhibit "F"**, which is incorporated herein by reference as if set forth fully herein.

2.9 Building permits for Phase I of Whistle Stop shall be issued by the Town upon (i) approval of the Development Agreement; (ii) approval of final plat by the Planning Commission; (iii) posting of all required surety; and (iv) dismissal of the Litigation by Developer as provided for in Section 2.10 herein.

2.10 The Parties shall dismiss the Litigation, with prejudice, via Agreed Orders in the form attached hereto as **Exhibit "G"**, within 15 calendar days of the Town's approval of a preliminary plat for Whistle Stop and the final plat for Phase I of Whistle Stop.

2.11 If Developer does not dismiss the Litigation within 15 calendar days after the latest of all of the approvals outlined in Section 2.10, the Developer agrees all approvals made pursuant to this Agreement shall be void and of no effect.

2.12 The Parties agree that the Litigation shall be stayed until 15 calendar days after the specially-called Planning Commission meeting to be held on November 1, 2018, unless otherwise extended by the Parties.

3. GENERAL PROVISIONS

3.1 **Definitions.** Except where otherwise noted, "Town," as used in this Agreement, shall include employees and agents of the Town, including the BOMA, Planning Commission, Town Administrator, Town Planner, Town Engineer and other agents and/or employees. Capitalized terms not otherwise defined herein are used as in the Town's regulations applicable to this Agreement.

3.2 **Construction and Interpretation; Amendments.** This Agreement constitutes the entire agreement of the Parties regarding the subject matter. It shall supersede all prior understandings, agreements and representations, written or oral. No provision of this Agreement shall be construed for or against either Party because its legal representative drafted such provision. If any provision in this Agreement is deemed to be unenforceable, such provision shall be severed, and the remaining provisions shall remain in full force and effect. Paragraph titles and captions are inserted as a matter of convenience and for reference and do not define, limit, extend or describe the scope of this Agreement or any of its provisions. Amendments or modifications to this Agreement are void unless in writing signed by the Party to be bound. Dates falling on weekends and federal or state holidays will be continued to the next business day.

3.3 **Governing Law.** This Agreement shall be interpreted and construed according to, and its provisions and their enforceability governed by, the laws of the State of Tennessee, without regard to conflict of laws principles thereof. Litigated disputes related to this Agreement shall be decided in courts of appropriate jurisdiction in the State of Tennessee, County of Williamson.

3.4 **Counterparts; Facsimile Signatures.** This agreement may be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original. All counterparts together shall constitute a single agreement. Facsimile and electronic mail signatures shall have the same force and effect as originals.

3.5 **Authority.** Individuals executing this Agreement, and each of them, warrant they have full authority to sign on behalf of, and thereby to bind, the entity(ies) on whose behalf they sign. The representative of the Town expressly represents that this Agreement has been approved by BOMA and that the representative has been authorized by BOMA to execute this Agreement.

Having read this Agreement in its entirety, the Parties have caused it to be executed by their appointed representatives on the dates indicated.

[SIGNATURES ON FOLLOWING PAGE]

TOWN OF THOMPSON'S STATION

Date: 11/9/18

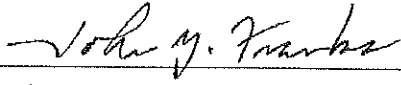
Signature: 

Name: COREY NAPIER

Title: MAYOR

WHISTLE STOP FARMS, LLC, a Tennessee limited liability company

Date: 11/8/18

Signature: 

Name: JOHN Y. FRANKS

Title: Member

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